

Remarks

Reconsideration of the rejection of record is requested in view of the amended specification and the remarks to follow.

Claims 1-11 are rejected under the doctrine of obviousness-type double patenting over claims 1-9 of U.S. Patent 6,362,158 B1.

Applicants are willing to provide a terminal disclaimer to overcome the aforementioned rejection based on double patenting, but respectfully request that this matter be deferred pending an indication of allowable subject matter by the Examiner.

Claim 1-9 and 11 are rejected under 35 USC 103 over WO 97/03170. The Examiner notes the presence of certain solvents in the reference and a solvent with a C log P of about 0.15 to about 0.64. The Examiner concludes that applicant's composition is obvious in view of this reference.

Applicants traverse the Examiner's rejection under 35 USC 103 as being based on a misunderstanding of the cited reference and the present claims.

To begin with, an essential component of applicant's claimed invention is the use of a solvent having a partition coefficient of log P from about 0.7 to about 2.0. This is an important reason why applicants are able to achieve a liquid softener having at least two phases which are transparent or translucent. The reference requires a partition coefficient in the range of 0.15 to 0.64. There is, therefore, no overlap in the C log P values of the reference solvent with applicant's claimed solvents. The reference is, therefore, critically deficient on its face as a basis of an obviousness rejection.

Further, while applicants invention is directed to a composition having at least 2 phases which are clear or transparent, the reference compositions are all homogeneous and single phase, a critical distinction of the present claims which the Examiner chooses to ignore.

The Examiner, however, states the following: "While the presence of two clear phases is not explicitly disclosed, the disclosure of translucent compositions implies the presence of at least two aqueous phases." Applicants question this technically confusing statement on several grounds and request that the Examiner provide some basis of support and clarification for it. To begin with, what is the relevancy of this statement to the instant claims? Applicant's invention is predicated on having two or more clear or translucent phases present; where is this disclosed in the reference?

Secondly, the definition of "translucent" according to Hachs Chemical Dictionary, fourth edition, is "Semitransparent". What two phases are being implied by the Examiner; where are

they shown or implied in the cited art; and are these 2 phases each translucent? Clarification is required.

It is respectfully submitted that the rejection based on WO 97/03170 must be withdrawn.

In view of the above, the present claims are patentably distinct from the prior art and allowance of all claims is, therefore, respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bernard Lieberman".

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